

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC FEARS MILT,

Petitioner,

Civil No. 2:19-cv-10550

Hon. George Caram Steeh

v.

DEWAYNE BURTON,

Respondent.

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**ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT,
DENYING CERTIFICATE OF APPEALABILITY, AND
DENYING PERMISSION TO APPEAL IN FORMA PAUPERIS**

Before the court is Petitioner's motion for relief from judgment brought under Federal Rule of Civil Procedure 60(b)(6). (ECF No. 14.) On March 5, 2020, the Court denied Petitioner's petition for a writ of habeas corpus because his claims lacked merit or were barred by his state court procedural default. The Court also denied a certificate of appealability and denied permission to appeal in forma pauperis. Petitioner did not appeal.

Petitioner's motion, filed on June 15, 2021, asserts that the Court ignored evidence that the car police observed Petitioner entering and exiting was not reported stolen, contrary to the stated justification for is arrest. Petitioner also asserts that he was denied the effective assistance of trial counsel and appellate counsel, whom he argues should have

discovered this fact and raised it in the trial court and on direct appeal.

Petitioner asserts that he is entitled to relief from judgment under Federal Rule of Civil Procedure 60(b)(6).

Rule 60(b)(6) may be used to relieve a party from judgment in extraordinary circumstances which are not addressed by the first five subsections of Rule 60(b). *Ford Motor Co. v. Mustangs Unlimited, Inc.*, 487 F. 3d 465, 468 (6th Cir. 2007). The Sixth Circuit has stated that: “Courts ... must apply subsection (b)(6) only as a means to achieve substantial justice when something more than one of the grounds contained in Rule 60(b)'s first five clauses is present. The something more ... must include unusual and extreme situations where principles of equity mandate relief.” *Id.* (internal citations and quotations omitted).

Petitioner’s arguments do not demonstrate that an unusual or extreme situation exists that warrants relief from judgment. Petitioner’s argument that the car in which police observed him was not reported as stolen was an allegation he presented both to the state courts and to this Court in his habeas petition. The Court explained why the argument was without merit. (Opinion, ECF No. 12, PageID.756-58.) In short, a FOIA response from the Detroit Police Department that the vehicle in question was not reported stolen by Johnnie or Doriea Breggs to that police

department between October 24-26, 2010, does not establish that the vehicle was not reported stolen. As explained in the Court's opinion, police conducted a stake-out of the parked vehicle because it was reported stolen to the Southfield Police Department by the vehicle's manufacturer - Mercedes-Benz. So too, the Court considered the arguments presented in Petitioner's motion regarding the alleged ineffectiveness of Petitioner's trial and appellate counsel. (id., PageID.746-755.) A habeas petitioner cannot raise arguments during his federal habeas proceeding, lose those arguments, then raise the same arguments based on the same evidence in a Rule 60(b) motion for relief from judgment. See *Brooks v. Bobby*, 660 F.3d 959, 962 (6th Cir. 2011).

Petitioner has also not demonstrated a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability is not warranted. 28 U.S.C. § 2253(c)(2). Leave to proceed in forma pauperis on appeal this order will also be denied as an appeal cannot be taken in good faith. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002); 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24 (a).

Based upon the foregoing,

IT IS HEREBY ORDERED that Petitioner's motion for relief from judgment is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that permission to appeal in forma pauperis is **DENIED**.

Dated: August 11, 2021

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 11, 2021, by electronic and/or ordinary mail and also on Eric Fears Milt #515221, Cooper Street Correctional Facility, 3100 Cooper Street, Jackson, MI 49201.

s/B Sauve
Deputy Clerk